

PATENT COOPERATION TREATY

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From the
INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

PCT

WRITTEN OPINION
(PCT Rule 66)

To:

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ATTY RESP TO WR OP: APRIL 12, 2005 *fin*

Date of mailing
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Applicant's or agent's file reference
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REPLY DUE

within 3 month(s)
from the above date of mailing

International application No.
PCT/US 03/41469

International filing date (day/month/year)
22.12.2003

Priority date (day/month/year)
26.12.2002

International Patent Classification (IPC) or both national classification and IPC
C09C1/36

Applicant
FENELON, Terry

1. This written opinion is the **first** drawn up by this International Preliminary Examining Authority.
2. This opinion contains indications relating to the following items:
 - I ☒ Basis of the opinion
 - II ☐ Priority
 - III ☐ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
 - IV ☐ Lack of unity of invention
 - V ☒ Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
 - VI ☐ Certain documents cited
 - VII ☐ Certain defects in the international application
 - VIII ☐ Certain observations on the international application
3. The applicant is hereby **invited to reply** to this opinion.

When? See the time limit indicated above. The applicant may, before the expiration of that time limit, request this Authority to grant an extension, see Rule 66.2(d).

How? By submitting a written reply, accompanied, where appropriate, by amendments, according to Rule 66.3. For the form and the language of the amendments, see Rules 66.8 and 66.9.

Also: For an additional opportunity to submit amendments, see Rule 66.4.
For the examiner's obligation to consider amendments and/or arguments, see Rule 66.4 bis.
For an informal communication with the examiner, see Rule 66.6.

If no reply is filed, the international preliminary examination report will be established on the basis of this opinion.
4. The final date by which the international preliminary examination report must be established according to Rule 69.2 is: 26.04.2005

Name and mailing address of the international preliminary examining authority:



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WRITTEN OPINION

International application No. PCT/US 03/41469

I. Basis of the opinion

1. With regard to the **elements** of the international application (*Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this opinion as "originally filed"*):

Description, Pages

1-9 as originally filed

Claims, Numbers

1-13 received on 20.09.2004 with letter of 17.09.2004

Drawings, Sheets

1/1 as originally filed

2. With regard to the **language**, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language: , which is:

- ☐ the language of a translation furnished for the purposes of the international search (under Rule 23.1(b)).
☐ the language of publication of the international application (under Rule 48.3(b)).
☐ the language of a translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.
☐ filed together with the international application in computer readable form.
☐ furnished subsequently to this Authority in written form.
☐ furnished subsequently to this Authority in computer readable form.
☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

- ☐ the description, pages:
☐ the claims, Nos.:
☐ the drawings, sheets:

5. ☐ This opinion has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed (Rule 70.2(c)).

6. Additional observations, if necessary:

V. Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**1. Statement**

Novelty (N)	Claims	1-13 yes
Inventive step (IS)	Claims	1-13 no
Industrial applicability (IA)	Claims	1-13 yes

2. Citations and explanations**see separate sheet**

Re Item V

**Reasoned statement with regard to novelty, inventive step or industrial applicability;
citations and explanations supporting such statement**

Reference is made to the following document :

D1: US 3,068,109 A

- 1.1. The document D1 discloses (the references in parentheses applying to this document) that Portland cement concrete may be integrally and decoratively coloured by mixing with the usual plastic Portland cement-sand-aggregate-water mixture, a pozzolanic material premixed with relatively small quantities of suitable mineral pigments, and preferably also premixed with a small amount of a dispersing agent for dispersing the pozzolanic material and the mineral pigment in the concrete. The colouring agent comprises 2 parts by weight of pozzolan, 15 parts by weight of brown iron oxide and 1.5 parts by weight of a dispersing agent for the pozzolan and iron oxide which are premixed to produce a colouring agent which gives an adobe colouration to the concrete mass (see D1, col. 1 line 20 to col. 2, line 5). The weight ratio of the iron oxide to the pozzolanic material is not greater than 1:5 (see D1, claim 2).
- 1.2. The subject-matter of claim 1 therefore differs from this known pigment agglomerate in that silica fume is used.
- 1.3. The subject-matter of claim 1 is new in the sense of Article 33(2) PCT.
- 1.4. The same reasoning applies, mutatis mutandis, to the subject-matter of the corresponding independent claims 4, 6, 8 which therefore are also considered new.
2. The problem to be solved by the present invention in view of the distinguishing feature may therefore be regarded as to provide a pozzolanic material which is able to increase the compressive strength of a cementitious compound.
- 2.1. The solution proposed in claim 1 of the present application cannot be considered as involving an inventive step (Article 33(3) PCT) for the following reasons.

- 2.2. As stated in the description of the present application (see page 6, line 13 to 31) silica fume is known as a very reactive pozzolan or pozzolanic material and is further known as a cement additive.

Therefore, in view of paragraph 2.2. above, the skilled person would regard it a normal design procedure to combine all the features set out in claim 1.

3. The same reasoning applies, mutatis mutandis, to the subject-matter of the corresponding independent claims 4, 6, 8 which therefore are also considered not inventive.
4. Dependent claims 2,3,5,7, 9-13 do not contain any features which, in combination with the features of any claim to which they refer, meet the requirements of the PCT in respect of inventive step.